

### REMARKS

Reconsideration of the rejections set forth in the Office Action mailed July 22, 2005, is respectfully requested. Claims 53 and 55 have been amended. Claims 58-62 were newly added. Claims 48-62 remain pending. Support for these amendments and new claims can be found in the specification at, e.g., paragraphs 0020, 0044, 0046, and Figs. 3B and 3E. Therefore, these amendments are made without the addition of new matter.

#### Claim Objections

Claim 53 was objected to because "slideably" contained a typographical error. The error has been corrected by amendment. Therefore, applicants respectfully request withdrawal of the objection.

#### Art Rejections

Claims 53, 54, and 56 were rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Kaldany (USP 5,906,599). Claim 57 was rejected as being allegedly unpatentable over Kaldany in view of Wang et al. (USP 5,951,494). Claims 53 and 56 were rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Fisher (USP 6,350,244).

Claim 53 has been amended to include the step of "*releasing a deployment lock to permit distal movement of the rod.*" None of the cited references teach or suggest all of the limitations of claim 53 as currently amended to include the step of releasing the deployment lock. Claims 54-57 depend from claim 53, and are therefore patentably distinct for the same reasons as applicable to claim 53.

Claim 58 specifies that the delivery device has “*a side exit port located adjacent the distal end of the tube*” wherein the tissue marker is deposited through the side exit port into the biopsy cavity. None of the cited references teach or suggest all of the limitations of claim 58. Fisher does not describe a delivery device with a side exit port. Kaldany does not describe a tissue marker. Therefore, Fisher and Kaldany do not teach or suggest the subject matter of claim 58. Claims 59-62 depend from claim 58, and are therefore patentably distinct for the same reasons as applicable to claim 58. Therefore, applicants respectfully request withdrawal of the rejections and reconsideration of the claims as amended and newly added.

Allowable Subject Matter

Applicant gratefully thanks the examiner for his indication that claims 48-52 are allowed over the prior art of record.

Applicants believe the claims are in condition for allowance. Favorable action on the merits of the claims is therefore earnestly solicited. If any issues remain, please contact Applicant's undersigned representative at (949) 737-2900. The Commissioner is hereby authorized to charge any additional fees that may be required to Deposit Account No. 50-2862.

Respectfully submitted,

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